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IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

October Term, 1981

No. 81-6512

ROBERT ALTON HARRIS,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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ROBERT ALTON HARRIS, Petitioner, v. STATE OF CALIFORNIA, Respondent.	)

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied. The petition was filed 30 days after the time limit set forth in Rule 20.1 of the Supreme Court rules. Furthermore, many of the issues presented in the current petition have been rejected by this Court when it denied a previous petition. (Harris v. California, No. 80-6702.) Finally, all of the issues presented here are currently pending before the Ninth Circuit Court of Appeals on petitioner's appeal from the denial of federal habeas corpus relief by the United States District Court for the Southern District of California. Thus, there is no need for this Court to exercise its discretion in favor of petitioner.

* * * * * *

ARGUMENT

SINCE THE PETITION WAS FILED 30 DAYS LATE, AND PETITIONER HAS ALL OF THESE ISSUES CURRENTLY PENDING BEFORE THE NINTH CIRCUIT ON HIS APPEAL, THERE IS NO REASON FOR THIS COURT TO EXERCISE ITS DISCRETION IN FAVOR OF PETITIONER

This is California's lead death penalty case. After petitioner's judgment was affirmed on direct appeal to the California Supreme Court (People v. Harris (1981) 28 Cal.3d 935) he petitioned this Court for a writ of certiorari, which petition was denied. (Harris v. California, No. 80-6702.) Harris has petitioned every level of the California courts for habeas corpus relief, without success. As indicated on page 6 of his petition the California Supreme Court denied his petition for habeas corpus on January 13, 1982. An execution date of March 16, 1982, was set, and on March 5, 1982, petitioner filed a voluminous petition for writ of habeas corpus in the United States District Court for the Southern District of California. The District Court ordered a written response from the State of California, and after a hearing held March 12, 1982, summarily denied the petition. That decision was appealed to the Ninth Circuit Court of Appeals which ordered an expedited briefing schedule. The briefs have now been filed, and oral argument before the Ninth Circuit is calendared for May 11, 1982.

The above sequence of events demonstrates all the reasons why this Court should deny the petition for writ of certiorari. First of all, the petition is not timely. Rule 20.1 of the Supreme Court rules requires such a petition to be filed within 60 days of the order by the state's highest court. That order was January 13, 1982. (Petn. p. 6.) Yet, the petition for writ of certiorari was not filed in this Court until April 12, 1982, almost a month late. No explanation for this tardiness

accompanied the petition. We note that it was filed in this Court exactly a month after the denial of habeas corpus in the District Court of the Southern District of California. Thus, we urge that this Court should reject the petition as having been untimely filed.

Furthermore, the issues raised herein are not new. Several of them have already been considered, either directly or tangentially in the previous petition for writ of certiorari which this Court denied last October. (Harris v. California, No. 80-6702.) Finally, it would seem to be a total waste of time for this Court to exercise its discretion in favor of granting this petition. All of the issues presented herein are currently being presented to the Ninth Circuit Court of Appeals on petitioner's appeal from the denial of habeas corpus in the District Court. (Harris v. Pulley (9th Cir. No. CA 82-5246.) Thus, petitioner may receive a favorable ruling on his issues from that court. At the very least, if he loses there this Court will have another opportunity at that time to review any of his issues which may be found to be substantial. Thus, for this reason too, we urge his petition be denied.

* * * * * *

CONCLUSION

Since the petition for writ of certiorari was filed almost a month too late, and presents only issues which are currently pending before the Ninth Circuit Court of Appeals, the petition should be denied.

Respectfully submitted,

GEORGE DEUKMEJIAN, Attorney General

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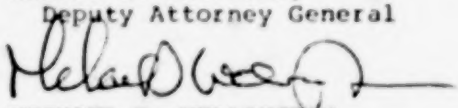

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STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

AFFIDAVIT OF SERVICE BY MAIL

No. 81-6512
ROBERT ALTON HARRIS v. CALIFORNIA

SHERRY L. COSSIO, being duly sworn, deposes and says: That affiant is over the age of 18 years, and not a party to the within action; that affiant's place of employment and business address is 110 West "A" Street, Suite 600, San Diego, California 92101; that on the 10th day of May, 19 82, affiant enclosed one true copy of the within

OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA: an original and 10 copies to Michael Rodak, Jr., Clerk, U.S. Supreme Court, Washington, DC 20543

in an envelope for each of the persons named below, addressed to each of them at the address set out immediately below each respective name, sealed said envelope, and deposited the same in the United States Mail at the City of San Diego, County of San Diego, State of California, with postage thereon fully prepaid; that there is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the said place of mailing and each of the places so addressed.

That all parties required to be served have been served as shown below:

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Sherry L. Cossio

Subscribed and sworn to before me this 10th day of May, 1982.

Vida M. Allen
NOTARY PUBLIC in and for the County of San Diego, State of California.

VIDA M. ALLEN
NOTARY PUBLIC - CALIFORNIA
COUNTY OF SAN DIEGO
My commission expires Aug. 20, 1982

SD CL-3 (11/78)